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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92052447
Party	Defendant Radames Rosado and Zulma I. Crespo
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Submission	Other Motions/Papers
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Date	07/01/2011
Attachments	motion for default judgment SMASH SPORTS cancellation.pdf (3 pages) (200056 bytes)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

Smash Men's Inc.)	Cancellation No.: 92052447
)	
Plaintiff,)	
vs.)	
)	
Radames Rosado and Zulma I. Crespo)	
Defendants)	
)	
)	
)	
)	
)	

MOTION FOR INVOLUNTARY DISMISSAL FOR FAILURE TO TAKE TESTIMONY

Radames Rosado and Zulma I. Crespo (“Registrants”) by their attorney, Anthony M. Verna III, Esq., hereby files this motion for involuntary dismissal for failure to take testimony based upon 37 CFR § 2.132 and TBMP Rule 534.01(a) against Smash Men’s Inc. (“Plaintiff”) as follows.

Failure to take testimony

Plaintiff has not taken testimony.

“Trademark Rule 2.132(a) provides that a motion for dismissal for failure to prosecute may be made by a defendant if a plaintiff’s testimony period has expired and that party has neither taken any testimony nor offered any evidence in support of its case. In response, the plaintiff must show cause why judgment should not be rendered against it and in the absence of a showing of good and sufficient cause, judgment may be rendered against the plaintiff. See 37 CFR Section 2.132(a). The 'good and sufficient cause' standard, in the context of this rule, is equivalent to the 'excusable neglect' standard which would have to be met by any motion under FRCP 6(b) to reopen the plaintiff's testimony period. See *Grobet File Co. of America, Inc. v. Associated Distributors Inc.*, 12 USPQ2d 1649 (TTAB 1989); and *Fort Howard Paper Co. v. Kimberly-Clark Corp.*, 216 USPQ 617 (TTAB 1982). See also, TBMP Section 535.02.”¹

When the Plaintiff has presented no evidence, the Plaintiff has failed to meet its burden of proof. “Inasmuch as petitioners have failed to offer any testimony or trial evidence in this case, we find that no reason exists for going forward with the remaining testimony periods. In the absence of any evidence of record on petitioners' behalf, petitioners have failed to meet their burden of proof herein and the entry of judgment against petitioners is appropriate.”²

1 See *HKG Industries Inc. v. Perma-Pipe Inc.* (TTAB) 49 USPQ2d 1156 (10/16/1998)

2 *IBID.*

WHEREFORE, the Registrant asks that judgment be entered for the Registrant under 37 CFR § 2.132 and TBMP Rule 534.01(a) because of Plaintiff's failure to take testimony and meet its burden of proof.

Dated: July 1, 2011

/s Anthony M. Verna III
Anthony M. Verna III, Esq.
Kravitz & Verna LLC
P.O. Box 3620293
PACC
New York, NY 10129

IN THE TRADEMARK TRIAL AND APPEAL BOARD

Smash Men's Inc.)	Cancellation No.: 92052447
)	
Plaintiff,)	
vs.)	
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Radames Rosado and Zulma I. Crespo)	
)	
Defendants)	
)	
)	
)	
)	

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 1st day of July, 2011, a copy of the foregoing Answer was served via First Class Mail, postage prepaid, on the following:

EDWARD R. SCHWARTZ
CHRISTIE, PARKER & HALE, LLP
P.O. BOX 7068
PASADENA, CA 91109-7068

Respectfully submitted,

Dated this July 1, 2011

/s/ Anthony M. Verna III

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